

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM

Section 7, Rio Brazos Subsection

**SCHEDULING AND PROCEDURAL ORDER FOR DETERMINATION OF
PRIORITY DATES AND IRRIGATION WATER REQUIREMENTS
IN THE RIO BRAZOS SUBSECTION OF SECTION 7
OF THE RIO CHAMA STREAM SYSTEM**

This Order is entered by the Special Master pursuant to Fed.R.Civ.P. 16(b) to guide the course of the determination of priority dates and irrigation water requirements in the Rio Brazos Subsection of Section 7 of the Rio Chama Stream System (“Brazos Subsection”).

I. DETERMINATION OF PRIORITY DATES.

A. Under the November 19, 2002, procedural order for the adjudication of surface water irrigation rights in Section 7, the adjudication of priority dates and irrigation water requirements will be initiated by the State following the completion of individual subfile activity. The adjudication of the elements of water rights in individual subfiles in the Brazos Subsection for surface water irrigation use is now complete with the exception of the determination of priority dates and irrigation water requirements.

B. The State of New Mexico proposes the determination of the following ditch-wide priority dates for irrigated lands under pre-1907 ditches located in the Brazos Subsection as described

below:

| DITCH | PRIORITY DATE |
|----------------------------|---------------|
| Parkview Ditch | 1861 |
| Ensenada Ditch | 1861 |
| Porvenir Ditch | 1894 |
| Los Brazos Community Ditch | 1861 |
| Ojitos Ditch | 1861 |
| Martinez Ditch | 1861 |
| Brazito Ditch Lateral | 1861 |
| La Puente Ditch | 1861 |
| Acequia de las Tres Plumas | 1880 |

C: The State of New Mexico proposes the determination of the following ditch-wide priority dates for lands in the Brazos Subsection that are irrigated under a final license issued by the Office of the State Engineer:

| DITCH | OSE License | PRIORITY DATE |
|----------------------------------|-------------|-------------------|
| Chavez Creek No. 2 | No. 965 | February 19, 1915 |
| Rice Ditch | No. 2059 | March 25, 1935 |
| Phil Corkin Infiltration Gallery | No. 2541 | October 22, 1945 |

D. The following defendants have previously agreed with the State of New Mexico on the priority date of their water rights in the Brazos Subsection and those dates have been incorporated into subfile orders entered by the Court. These priority dates cannot be challenged by the defendants that approved these dates, but other persons in the Brazos Subsection with standing may file objections to them.

| DEFENDANTS | SUBFILE | DITCH | PRIORITY DATE |
|---|----------------|--------------------|---------------|
| Tony Casados, Sr. & Sons Partnership | CHRB-004-0049A | Chavez Creek Ditch | 1892 |
| Debbie L. Garcia | CHRB-003-0001 | Chavez Creek Ditch | 1894 |

Anthony T. Garcia
J. Patrick Garcia
Munira K. Garcia
J. Placido Garcia, Jr.

Alvin Eversgerd
Belva Eversgerd

CHRB-003-0002

Chavez Creek Ditch 1894

E. The adjudication of water right priorities on community and private ditches in the Brazos Subsection shall be completed in a show cause proceeding modeled on the process used in the determination of priority dates in Section 5 (Rio Gallina). *See Scheduling and Procedural Order for Determination of Priority Dates and Irrigation Water Requirements in the Rio Gallina Section of the Rio Chama Stream System* filed August 8, 2008 (Doc. 8752).

By June 15, 2011, the State of New Mexico (“State”) shall file a Motion For Approval of Form of Notice and Order to Show Cause with respect to priority date offers that the State intends to serve on individual subfile defendants in the Brazos Subsection. With this Court’s approval of the proposed form of notice, the Notice and Order to Show Cause will be served by mail on all individual subfile defendants in the Brazos Subsection. The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with either: (1) the priority date proposed by the State for their own water right and ditch, or (2) the priority dates proposed by the State for any other community or private ditch or surface water irrigation water rights in the Brazos Subsection. In the absence of an objection to the priority dates proposed by the State, the Court will enter a final order with respect to priority dates of all ditches and surface water irrigation rights in the Brazos Subsection. This determination of priority dates shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants in the Brazos Subsection will be

informed that they will have no other opportunity to protest priority date determinations of the ditches and surface water irrigation rights in the Brazos Subsection, and that subsequent *inter se* proceedings in the Brazos Subsection will not include the opportunity to object to those determinations.

The State shall prepare a proposed Notice and Order to Show Cause in connection with all ditches and surface water irrigation rights in the Brazos Subsection to be served on the Commissioners of each community ditch in the Brazos Subsection and on the United States.

The State shall prepare a proposed Notice for publication to inform defendants and all persons having water rights of any type in the Brazos Subsection of their right to participate and offer evidence in support of objections to the proposed determination of priority dates for ditches and surface water irrigation rights in the Brazos Subsection. The approved Notice shall be published once a week for four consecutive weeks in the Rio Grande Sun.

II. DETERMINATION OF IRRIGATION WATER REQUIREMENTS.

A. The State proposes the determination of the following irrigation water requirements for irrigated lands under pre-1907 ditches located in the Brazos Subsection as described below:

- a. The weighted consumptive irrigation requirement (CIR) is 1.11 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 2.78 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 4.63 acre-feet per acre per annum.

The ditches in the Brazos Subsection to which these amounts would apply are those identified in paragraphs I (B) & (D) above. The irrigation water requirements in the Brazos Subsection described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these

proceedings.

B. The State proposes the determination of the following irrigation water requirements for lands in the Brazos Subsection that are irrigated under a final license issued by the Office of the State Engineer.

Chavez Creek No. 2:

- a. The weighted consumptive irrigation requirement (CIR) is 1.11 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 1.34 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 2.23 acre-feet per acre per annum.

Rice Ditch:

- a. The weighted consumptive irrigation requirement (CIR) is 1.11 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 1.51 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 2.52 acre-feet per acre per annum.

Phil Corkin Infiltration Gallery:

- a. The weighted consumptive irrigation requirement (CIR) is 1.11 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 1.50 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 2.50 acre-feet per acre per annum.

The irrigation water requirements in the Brazos Subsection described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

C. The adjudication of irrigation water requirements in the Brazos Subsection shall be completed in a show cause proceeding using the procedures described above in connection with the determination of priority dates for ditches in the Brazos Subsection.

By June 15, 2011, the State shall file a Motion For Approval of Form of Notice and Order to Show Cause in connection with the determination of irrigation water requirements that the State intends to serve on individual subfile defendants in the Brazos Subsection. With this Court's approval of the proposed form of notice, the Notice and Order to Show Cause will be served by mail on all individual subfile defendants in the Brazos Subsection. The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with the irrigation water requirements proposed by the State for all surface water irrigation use in the Brazos Subsection. In the absence of an objection to the irrigation water requirements proposed by the State, the Court will enter a final order with respect to surface water irrigation requirements in the Brazos Subsection. This determination of irrigation water requirements shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants will be informed that they will have no other opportunity to protest the determination of irrigation water requirements in the Brazos Subsection, and that subsequent *inter se* proceedings in the Brazos Subsection will not include the opportunity to object to this determination.

The State shall prepare a proposed Notice and Order to Show Cause in connection with all ditches and surface water irrigation rights in the Brazos Subsection to be served on the Commissioners of each community ditch in the Brazos Subsection and on the United States.

The State shall prepare a proposed Notice for publication to inform defendants and all persons

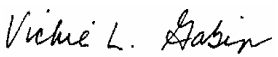
having water rights of any type in the Brazos Subsection of their right to participate and offer evidence in support of objections to the proposed determination of irrigation water requirements in the Brazos Subsection. The approved Notice shall be published once a week for four consecutive weeks in the Rio Grande Sun.

D. The State shall coordinate the mailing and publication of the Notices regarding the determination of priority dates and irrigation water requirements so that these events and the stated deadlines therein occur in a coordinated manner. The two Notices will be combined in a single mailing.

The Notices shall be mailed to the last known address of individual subfile defendants as they are listed in the Court's records. The State shall not be required to make a determination of current ownership of any tracts, nor mail notices to persons that are not a party to these proceedings. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed.R.Civ.P. 25(c) in order to participate in these proceedings.

E. After the deadline has expired for filing protests to the proposed determination of priority dates and irrigation water requirements, the State shall submit a proposed scheduling and procedural order to address and resolve any objections that are filed with the Court.

IT IS SO ORDERED.



VICKIE L. GABIN, SPECIAL MASTER